

## REMARKS

Claims 1-19 remain pending in this application, each of which was rejected in the Office Action. More particularly, the Office finally rejected:

- claims 1-5 and 7-19 under 35 U.S.C. 102(b) as being anticipated by U.S. Letters Patent 6,393,386 (“Zager *et al.*”); and
- claim 6 under 35 U.S.C. 103(a) as being unpatentable over Zager *et al.*, in view of U.S. Letters Patent 6,892,317 (“Sampath *et al.*”).

Applicant traverses each of these rejections.

Applicant maintains that the cited art fails to teach all the limitations of the cited claims. An anticipating reference, by definition, must disclose every limitation of the rejected claim in the same relationship to one another as set forth in the claim. M.P.E.P. § 2131; *In re Bond*, 15 U.S.P.Q.2d (BNA) 1566, 1567 (Fed. Cir. 1990). Even for an obviousness rejection, the prior art reference (or references when combined) must teach or suggest all the claim limitations. M.P.E.P. § 706.02(j); *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). The art of record fails to meet these standards.

In response to the previous Office Action, Applicant amended each of the independent claims 1, 10, and 15 has been amended so that the autonomous adaptation of the monitoring scheme occurs “responsive to the likelihood of the correspondence of the detected pattern to a known pathology pattern.” Note that the limitation permits pattern detection even in the absence of pattern matching. That is, the present invention in this particular embodiment can react to a behavioral pathology, or the development of a behavioral pathology, even though it does not match the signature pattern that the system is referencing. This limitation furthermore permits a graduated response, since the autonomous adaptation is responsive to the likelihood.

Applicant previously answered that to teach “autonomous adaptation” “responsive to the likelihood of the correspondence of the detected pattern to a known pathology pattern.” In response to this argument, the Office merely states that “...given [sic] the claims the broadest reasonable interpretation, the cited Zager reference does read on the claims.” Although claims are to be given their broadest reasonable construction, “...it is incumbent upon the examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference.” *Ex parte Levy*, 17 U.S.P.Q.2d (BNA) 1461, 1462 (Pat. & Tm. Off. Bd. Pat. App. & Int. 1990). What’s noticeably lacking here is what the Office’s “broadest reasonable interpretation” might be and how it is disclosed in *Zager et al.* Applicant has shown that the passages relied on by the Office do not teach that the autonomous adaptation of the monitoring scheme occurs “responsive to the likelihood of the correspondence of the detected pattern to a known pathology pattern.” The Office has failed to even address how Applicant’s construction of the claims is too narrow or how *Zager et al.* is broader than Applicant’s construction. Applicant therefore respectfully submits that the Office has failed to establish *prima facie* that *Zager et al.* teaches the cited limitation.

The Office does, at least, cite col. 13, lines 48 – 50 of *Zager et al.* for teaching the cited limitation. These two lines read, in context:

The desired result of monitoring is:  
to recognize the onset or termination (hereinafter sometimes  
termed the "offset") of faults by interpreting the messages a  
device or application has emitted; and  
*to detect the onset or offset of anomalous behavior by performing  
quantitative analytic tests against performance metrics.*

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<sup>1</sup> Applicant disputes that *Zager et al.* teaches “autonomous adaptation” and reserves the right to pursue broader claims in a later application.

(emphasis added to indicate cited portion) The only reasonable construction of this passage, when taken in context, and especially the context of the reference as a whole, is that it is disclosing detecting through signature matching. Note that the statement comes in conjunction with the recognition of faults by interpreting messages from a device or application. Thus, clearly, the only reasonable construction here is to disclose detection in the absence of such messages, *i.e.*, though quantitative analytic tests against performance metrics. The only disclosure in Zager *et al.* meeting this description is signature matching. Accordingly, the Office is still misconstruing Zager *et al.*

Regardless of whether the grounds for rejection is novelty under 35 U.S.C. § 102 or obviousness under 35 U.S.C. § 103, the art of record must permissibly teach or suggest all the limitations of the claims. M.P.E.P. § 2131 (novelty); *In re Bond*, 15 U.S.P.Q.2d (BNA) 1566, 1567 (Fed. Cir. 1990) (novelty); M.P.E.P. § 706.02(j) (obviousness); *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974) (obviousness). Again, Applicant respectfully submits that Zager *et al.* and Sampath *et al.*, alone or in combination, and even under the Office's construction, fail to teach or suggest autonomously adapting the monitoring scheme "responsive to the likelihood of the correspondence of the detected pattern to a known pathology pattern." This limitation is recited in each of the independent claims 1, 10, and 15. Applicant therefore requests that all rejections be withdrawn and that the claims be allowed to issue.

Reconsideration of the present application is respectfully requested for the reasons set forth above.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is invited to contact the undersigned attorney at (713) 934-4053 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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